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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,071	06/27/2002	Alf Hammes	1999DE507	7262

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EXAMINER

WHITE, EVERETT NMN

ART UNIT PAPER NUMBER

1623

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/070,071

Applicant(s)

HAMMES, ALF

Examiner

EVERETT WHITE

Art Unit

1623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See *Continuation Sheet*.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See *Continuation Sheet*.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-8 and 10-18.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: Amending Claim 1 by limiting the amount of oxidizing agent added to the concentrated aqueous solution to an amount between 0.05 and 5% by weight raises a new issue that would require further consideration and/or search of claimed invention.

Continuation of 5. does NOT place the application in condition for allowance because: of the reasons of record. Applicants argue against the rejection of the process claims on the ground that the Traill et al patent uses acids at a larger weight percentage than the amount of acid used in the instantly claimed invention. This argument is not persuasive because the instantly claimed process does not limit the amount acid that can be used in the instant invention. Applicants argue that the Savage patent uses a small amount of hydrogen peroxide which is sprayed onto a cellulose ether which is essentially dry and free-flowing particular form rather than an aqueous slurry. This argument is not persuasive since the Savage patent does show that it is well known in the art to use hydrogen peroxide or alkali metal peroxides during a slurry etherification to control viscosity (see the 2nd paragraph of the "BACKGROUND" section in column 1). In the next paragraph of the BACKGROUND section, the Savage patent shows that it is well known in the art to add aqueous hydrogen peroxide after etherification to wet, washed cellulose ether before final drying. These procedures suggest the addition of an oxidizing agent to an aqueous slurry containing cellulose. Accordingly, the rejection of Claims 1-8, 10 and 11 under 35 U.S.C. 103 over the Traill et al patent in view of the Savage patent is maintained for the reasons of record. In regard to the rejection of Claims 12-18 under 35 U.S.C. 103 over the Kobayashi et al patent in view of the Savage patent, Applicants argue that hindsight has been used to reconstruct the claimed invention. In response to this argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).



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